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CARRIER BLACKMAN AND ASSOCIATES			WILKENS, JANET MARIE	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 20040502

Application Number: 09/595,943

MAILED

Filing Date: June 16, 2000

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Appellant(s): EASTMAN, ROBERT

GROUP 3600

William Blackman  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed March 18, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-5 and 7-23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

6,253,777	ANDERSON	7-2001
5,678,247	VICKERS	10-1997
3,709,237	SMITH	1-1973
5,439,018	TSAI	8-1995
3,810,482	BEAVERS	5-1974

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-5, 7, 10-15 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view Vickers (5,678,247). Anderson teaches a portable enclosure (Fig. 1) comprising: a roof (40), door means (50) and four walls (20; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) wherein at least one wall has lining material (24) disposed thereon. The liner is for fire-proofing the tent and is located on an inner

surface of the tent. For claims 1 and 10, Anderson fails to teach a lining material wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson by using an alternate liner therein, one that prevents human odor from being carrier outside the tent, such as is taught by Vickers, instead of the "flame resistant" liner presently used, depending on the priorities of the campers to be using the tent (e.g. if the campers want to camp in an area with a lot of bears, etc. a tent with "odor-absorbing" qualities would be more of a priority than a tent with a liner that helps prevent fires.) Furthermore, the liner material of Vickers is equivalent to that of the liner of Anderson, both being made of material. Note: for claims 5 and 13, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claims 3 and 11, Anderson in view of Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Anderson in view of Vickers by making it one of these

materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Anderson in view of Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been an obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Anderson in view of Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 9 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Vickers as applied to claims 1, 3-5, 7, 10-15 and 23 above, and further in view of Tsai. As stated above, Anderson in view of Vickers teaches the specifications of claim 1, including a door on the enclosure. For claims 9 and 18-22, Anderson in view of Vickers fails to specifically teach that the door is a closable/zippered entrance. Tsai teaches a portable enclosure (Fig. 1) having a panel with a zippered entrance door (111) therein. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Anderson in view of Vickers by using an alternate door means thereon, i.e. using a zippered portion on wall (30) instead of the entrance way (50) presently used, to provide a door that would allow the enclosure to completely enclose the space there inside, preventing insects, etc from entering, and that would allow the enclosure to occupy less space when erected (no entrance way ground space needed).

Claims 1-5, 7 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Anderson and Vickers (5,678,247). Smith teaches a portable enclosure/hunting blind (Fig. 1) comprised of hingedly attached walls (18). For claim 1, Smith fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Smith, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vicker, to provide the hunting blind with an "odor-absorbing" feature. Note: for claim 5, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claim 3, Smith in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Smith in view of Anderson and Vickers by making it

one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Smith in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Smith in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-5, 7, 8, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai in view of Anderson and Vickers (5,678,247). Tsai teaches a portable enclosure (Fig. 1) comprised of four triangular panels joined to form a pointed dome shape; one panel having a zippered entrance door (111) therein. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill

in the art at the time of the invention to modify the enclosure of Tsai, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carried outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature. Note: for claim 5, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claim 3, Tsai in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Tsai in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claim 7, Tsai in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Tsai in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

Claims 1, 3-7, 9-16 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beavers in view of Anderson and Vickers (5,678,247). Beavers

teaches a portable enclosure (Fig. 1) comprised of four X-shaped sub-frame assemblies (20), one foldably collapsible U-shaped support structure (24), four wall panels (Fig. 2; the material of the walls being flexible enough to be folded but rigid enough to keep their shape when in their erected condition) and a roof (see Fig. 2). A zippered entrance door (18) is contained in one of the wall panels of the enclosure. For claims 1 and 18-22, Tsai fails to teach a lining material on the existing material of the walls wherein the material comprises a binder and a multiplicity of carbon particles interspersed in the binder. Vickers teaches an odor-absorbing fabric/liner made of layers (20,22,24); the two outer layers being made of fabric while the middle layer (24) is made with a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevents his scent from reaching the animals. Anderson teaches use of liners on outdoor structures (See column 1, lines 23-26 and column 4, lines 9-21 for example.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the enclosure of Beavers, by adding a liner thereon, such as is taught by Anderson, one that prevents human odor from being carrier outside the blind, such as the material taught by Vickers, to provide the hunting blind with an "odor-absorbing" feature. Note: for claims 5 and 13, one of the fabric layers (20,22) can be considered "the fabric material" (the binder and other layer making up "the lining material").

For claims 3 and 11, Beavers in view of Anderson and Vickers fails to teach that the binder is specifically made from polyacrylates, polyurethanes, polyolefins or a

mixture thereof. The examiner takes Official notice that these materials are well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the binder of Beavers in view of Anderson and Vickers by making it one of these materials, depending on the desired need of the person constructing the lining material, e.g. depending on the material readily available, liner properties desired/required, economic factors, etc.

For claims 7 and 15, Beavers in view of Anderson and Vickers fails to teach that the carbon particle size ranges from between .01 mm and 5 mm in diameter. It would have been obvious consideration to one of ordinary skill in the art at the time of the invention to use any of a number of differently sized carbon particles in the binder of Beavers in view of Anderson and Vickers, depending on the desired need of the person constructing the lining material, e.g. depending liner properties desired/required, etc.

#### **(11) Response to Argument**

In response to applicant's argument that Vickers is nonanalogous art: it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Vickers teaches odor-absorbing fabric made of a material which includes a binder and a multiplicity of carbon particles interspersed in the binder (see column 3, lines 12-26). This material is used in hunting clothes to help conceal the hunter, i.e. prevent his

scent from reaching the animals. This type of material being transferable to other types of outdoor items, such as hunting blinds, tents, etc. Therefore, as stated above, it would have been obvious to modify the enclosure of Anderson by using this type of material/liner therein instead of the "flame resistant" liner presently used, depending on the desired need of the person making/using the tent. Furthermore, it would have been obvious to add this material on the hunting blind panels of Smith, the enclosure of Tsai and the enclosure of Beavers for the same advantages. (Note: The use of general liners on outdoor structures also being established by the reference of Anderson. See column 1, lines 23-26.) Finally, it should be noted that the three layers of the material of Vickers, as a whole, are being considered "the lining material". This limitation in the claims being constructed using "comprises" and therefore, features in addition to the binder and particles, i.e. the fabric layers that sandwich the binder/particles in Vickers, may be part of the structure. As for the lining material being open to the "air" and inside of the structure, as stated above (and considering all three layers of Vickers as the lining material), this would be the case in the art rejections' liner constructions. Note: even if the claims were amended to state that it is the binder material that is open to the air/inside of the structure, as discussed at the interview, the reference of Sesselmann teaches a scent-absorbing material having its binder material as an outer layer (see Fig. 4).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning: it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). See art rejections arguments above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Wilkens  
May 2, 2004

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